



August 20, 2019

VIA E-FILE

The Honorable Jennifer L. Hall
J. Caleb Boggs Federal Building
844 N. King Street
Room 3124, Unit 27
Wilmington, DE 19801-3556

FILED UNDER SEAL

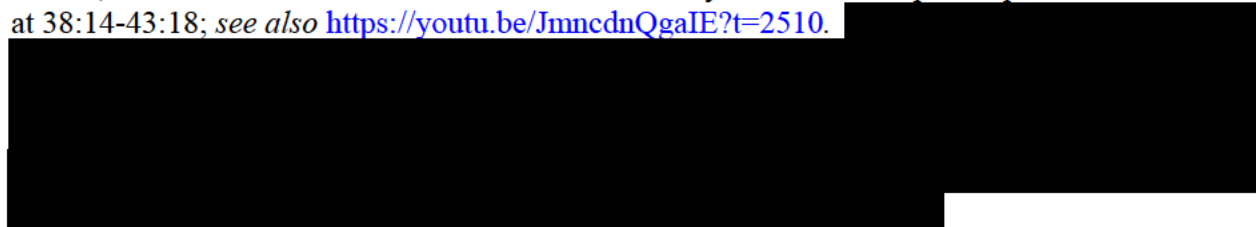
**RE: *Pacific Biosciences of California, Inc. v. Oxford Nanopore Tech., Inc.*
C.A. Nos. 17-cv-275, -1353-LPS**

Dear Judge Hall:

PacBio respectfully requests that the Court Order ONT to provide a knowledgeable, non-evasive witness to respond to PacBio's 30(b)(6) topics 4, 15, 24, 25, 26, and 27 for the '056 Patent (the "'056 Topics") at Weil's California offices. After the Court's Reconsideration Order on the '056 Patent (C.A. No. 17-cv-275-LPS, D.I. 255), ONT offered Dr. Stuart Reid on the '056 Topics, relating to the operation of the accused products. Having deposed Dr. Reid before, PacBio promptly notified ONT that Dr. Reid was not knowledgeable enough for these topics and requested Dr. Andrew Heron, who led the team working on the relevant aspects of the accused products. Ex. A. ONT refused. As predicted, Dr. Reid proved unable and/or unwilling to testify knowledgeably to the operation of the accused products, and instead offered answers marked by evasion, nit-picking, and a feigned inability to comprehend questioning.

Attached is Dr. Reid's transcript with the relevant sections highlighted. Ex. B. Beyond this short briefing, PacBio encourages the Court to review the highlighted transcript passages in full, which speak for themselves.

Traditional DNA-translocating enzymes used for sequencing operate through a complex mechanism that is generally dominated by one rate-limiting step. This leads to irregular DNA movement, which complicates the DNA sequencing signal. The inventors of the '056 Patent recognized, however, that the enzyme kinetics could be modified in such a way that *two* steps dominate. This constrains the enzyme to translocate DNA in a smoother and more regular way such that individual DNA translocation events are more likely to happen on a similar time scale. Ex. C at Figure 33. This allows one to obtain DNA sequence information both more accurately and more quickly.

ONT has adopted this invention for its products. Indeed, with much fanfare, ONT's CTO, Clive Brown, introduced the "Fast Mode" feature of its enzymes in a 2015 public presentation. Ex. E at 38:14-43:18; *see also* <https://youtu.be/JmncdnQgaIE?t=2510>. 

[REDACTED]

[REDACTED]. The “Fast Mode” operation of the accused products, and the related documents are central to the 30(b)(6) testimony sought by PacBio—testimony that Dr. Reid was unable or unwilling to provide.

First, Dr. Reid was never the proper witness to testify to the '056 Topics. [REDACTED]

[REDACTED]

Dr. Reid’s lack of knowledge alone is a problem, but his testimony is permeated with a range of tactics to avoid offering substance. [REDACTED]

[REDACTED]

[REDACTED] This testimony is astounding, as ONT illustrates the translocation of DNA in the video on its own website titled “How nanopore sequencing works.” See <https://nanoporetech.com/resource-centre/how-nanopore-sequencing-works>. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“[E]vasive answers and astonishing failures of memory at . . . depositions suggest a concerted, if inept, effort to thwart discovery.” *Pennar Software Corp. v. Fortune 500 Sys.*, No. 01- 01734 EDL, 2001 U.S. Dist. LEXIS 18432, at *9 (N.D. Cal. Oct. 25, 2001). Courts in this district have held that, “[i]f ‘a deponent fails to answer a question asked under Rule 30,’ or provides an answer that is ‘evasive or incomplete,’ then a motion to compel the deposition testimony may be filed.” *Oy v. Verizon Services Corp.*, 2013 WL 5675516, at *2 (D. Del. Oct. 15, 2013). PacBio requests that ONT be ordered to provide a completely prepared and responsive witness on the ’056 Topics in Weil’s California offices.

Respectfully submitted,

/s/ Brian E. Farnan

Brian E. Farnan

cc: Counsel of Record (via E-Mail)